IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4114 OF 2006

Ketan Gogri ...Applicant
vs.
1. M/s.Advent Advisory Services P.Ltd.
2. M/s.Matulya Mills Ltd.
3. Yogendra Mafatlal
4. Ajay Mafatlal
5. T.C.S.Ramanujam
6. Saurabh Shodhan
7. Atulya Mafatlal
8. Milind Sohoni
9. State of Maharashtra ...Respondents

Mr.A.P.Mundargi Sr.Counsel with Mr.Rajeev Sawant for the Applicant
Ms Bina Jariwala i/b M/s.Auroma Lan for Respondent No.1
Ms Manish Vinchare i/b Mr.Bhavesh Parmar for Res. Nos.2 & 4.
Mr.J.K.Jadhav for Respondent No.6.
Mr.S.V.More, A.P.P. for State.

WITH
CRIMINAL APPLICATION NO.4115 OF 2006

Divya Shah ...Applicant
vs.
1.Matulya Mills Ltd.
2. Yogendra Mafatlal
3. Ajay Mafatlal
4. T.C.S.Ramanujam
5. Saurabh Shodhan
6. Atulya Mafatlal
7. Milind Sohoni
8. M/s.Advent Advisory Services P. Ltd.
9. State of Maharashtra ...Respondents

Mr.A.P.Mundargi Sr.Counsel with Mr.Vibhav Krishna i/b M/s.Juris Consillis for the Applicant
Ms Bina Jariwala i/b Auroma Law for Respondent No.8
Ms Manisha Vinchare i/b Mr.Bhavesh Parmar for Res.Nos.1 & 3.
Mr.J.K.Jadhav for Respondent No.5.
Ms S.V.Gajare,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : NOVEMBER 28,2006.

P.C.:

1. Heard the learned Senior Counsel for the Applicants in both the Applications. Both the Applications can be

conveniently disposed of by a common order.

2. Both the Applications under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code) arise out of a complaint filed by the first Respondent against the second to eighth Respondents under section 138 of the Negotiable Instruments Act, 1881. An Application was made by the Accused No.3 on 4th October 2006 for issuing witness summons to the three witnesses. The said Application was allowed on 4th October 2006. The Applicants in these Applications are the two witnesses to whom witness summons has been ordered to be issued by the order impugned dated 4th October 2006.

3. The learned Senior Counsel for the Applicants submitted that the order for issuing witness summons has been passed mechanically and without application of mind. He submitted that no reasons are given either in the Application made by the Accused No.3 or in the impugned order calling the Applicants as witnesses. He submitted that from the witness summons which is issued to the Applicants it is not clear as to the purpose of calling the said witnesses for giving the evidence. He pointed out that the Applicant in application No.4115 of 2006 is a reputed Advocate and Solicitor by profession and she is also summoned as a Defence Witness at the instance of the Accused no.3. He submitted that the Applicant is entitled to claim a privilege under section 126 of the Indian Evidence Act, 1872 (hereinafter referred to as

the said Act of 1872) and if on the basis of the summons the Applicant is forced to depose before the learned Trial Judge, the Applicant will be deprived of her right to claim privilege.

4. I have carefully considered submissions. The only effect of the impugned order is that the Applicants will have to appear before the Magistrate as witnesses in a complaint filed under section 138 of the said Act of 1881. Under section 143 of the said Act of 1881, the complaint has to be tried by adopting summary procedure under the said Code. Section 143 of the said Act of 1881 specifically provides that the provisions of sections 262 to 265 of the said Code shall as far as may be apply to such trials. Section 262 (1) of the said Code provides that the procedure specified under the Code for trial of summons cases shall be followed except as mentioned in sections 262 to 264. On plain reading of sections 262 to 264, it is obvious that the provisions of section 254 of the said Code will apply to a case under section 138 of the said Act of 1881. Under sub section 2 of section 254, the learned Magistrate has a power to issue summons either on the Application of the prosecution or of the accused to any witness directing him to attend or to produce any document or other thing. In the present case, by passing the impugned order, the learned Magistrate has exercised the said power. There is no requirement of law that in every Application made by the accused for issuance of the witness summons to a defence witness, detailed reasons for issuing

witness summons must be incorporated.

5. Form No.33 under the said Code has been prescribed for issuing summons to the witness. Only if witness is summoned for production of any documents, the description of such documents is required to be incorporated in the summons. It is not necessary to incorporate the purpose for which the witness has been called for deposing before the court.

6. In Application No.4115 of 2006, the Applicant wants to claim privilege under section 126 of the said Act of 1872. The question of claiming privilege arises only when a question is asked to a witness which requires him to disclose the facts in respect of which he is entitled to claim privilege. Therefore, the Applicant can claim privilege only after the Applicant steps into witness box and only when an occasion for claiming privilege arises. The fact that the Applicant wants to claim privilege is no ground by itself to challenge the order issuing witness summons.

7. By filing the present application, the Applicants have invoked the provision of section 482 of the said Code. It is well settled law that power under section 482 of the said Code has to be exercised sparingly and only in exceptional cases. Surely, the power under section 482 of the said Code cannot be exercised for quashing an order by which witness summons is issued to the defence witnesses. No case is made out for interference under section 482 of the said Code. Applications

are rejected.

JUDGE